

Jan 24, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO AGUILAR-LOPEZ,

Defendant.

No. 2:10-cr-06018-EFS
[4:15-cv-05030-EFS]

**ORDER DENYING CONSTRUED
MOTION FOR RELIEF FROM
JUDGMENT UNDER RULE 60(b)**

On January 22, 2019, Defendant Antonio Aguilar-Lopez filed “Memorandum Motion Brief to Reply to the District Court Order Denying Construed Motion for Reconsideration Motion Rule 58(a) Violated Rule 8(c) Right of Evidentiary Hearing is Required to Appoint Counsel – Petitioner’s Here Applied Fed. R. Civ. 60(b)(6) Apply Discretion and Power to Vacate Judgment in Light of Supreme Court Opinion in of Gonzalez (supra) 2005 [1563],” ECF No. 287. The Court construes this brief as a motion for relief of judgment under Federal Rule of Civil Procedure 60(b).

In his construed Motion for Relief of Judgment, Mr. Aguilar-Lopez reiterates the same arguments he presented in his Construed Motion for Reconsideration and

1 Supplement, ECF Nos. 283 & 285.¹ Some arguments are copied verbatim, others are
2 reiterated almost verbatim. *See id.* All arguments are framed in a request for relief
3 from the Court’s July 23, 2015 dismissal of Mr. Aguilar-Lopez’s 28 U.S.C. § 2255
4 petition under Federal Rule of Civil Procedure 60(b)(6). *See* ECF No. 261.

5 Federal Rule of Civil Procedure 60(b) states that upon “motion and just terms,
6 the court may relieve a party . . . from a final judgment, order, or proceeding.”
7 Mr. Aguilar-Lopez requests relief under Rule 60(b)(6), which must be made within a
8 “reasonable” amount of time, and “may only be granted where the petitioner has
9 diligently pursued review of his claims.” FED. R. CIV. P. 60(c)(1); *Foley v. Biter*,
10 793 F.3d 998, 1004 (9th Cir. 2015). Relief from judgment under this rule “requires a
11 showing of ‘extraordinary circumstances’” and must be “used sparingly and as an
12 equitable remedy to prevent manifest injustice.” *Gonzalez v. Crosby*, 545 U.S. 524,
13 536 (2005)²; *Hamilton v. Newland*, 374 F.3d 822, 825 (9th Cir. 2004) (internal
14 quotations omitted). “Such circumstances will rarely occur in the habeas context.”
15 *Gonzalez*, 545 U.S. at 535.

16 The Court’s Order from which Mr. Aguilar-Lopez seeks relief was docketed on
17 July 23, 2015—over three years ago. ECF No. 261. Since then, Mr. Aguilar-Lopez
18 has pursued numerous avenues to advance his claims, all of which have been
19

20 ¹ The Court denied this Construed Motion for Reconsideration as being untimely and for lacking
21 merit. *See* ECF No. 286.

22 ² The Court recognizes that *Gonzalez* explicitly stated that it applied solely to motions under
28 U.S.C. § 2254. However, the Ninth Circuit and several other circuits have applied *Gonzalez* to
petitions under 28 U.S.C. § 2255 as well. *See, e.g., United States v. Buenrostro*, 638 F.3d 720, 722
(9th Cir. 2011) (holding the same and listing circuits in agreement). The Court therefore applies
Gonzalez here.

1 unsuccessful due to their merits or procedural defects. Mr. Aguilar-Lopez has shown
2 reasonable diligence in pursuing his claims. However, as the Court stated in its
3 previous Order, in which the Court denied Mr. Aguilar-Lopez's nearly identical
4 arguments, ECF Nos. 283 & 285, Mr. Aguilar-Lopez has not demonstrated such
5 extraordinary circumstances as to warrant relief. *See* ECF No. 286. As such, and for
6 the reasons stated above, the Court denies Mr. Aguilar-Lopez's construed Motion for
7 Relief of Judgment Under Rule 60(b), ECF No. 287.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 **1.** Defendant Antonio Aguilar-Lopez's "Memorandum Motion Brief to Reply
10 to the District Court Order Denying Construed Motion for
11 Reconsideration Motion Rule 58(a) Violated Rule 8(c) Right of
12 Evidentiary Hearing is Required to Appoint Counsel – Petitioner's Here
13 Applied Fed. R. Civ. 60(b)(6) Apply Discretion and Power to Vacate
14 Judgment in Light of Supreme Court Opinion in of Gonzalez (supra) 2005
15 [1563]," **ECF No. 287**, is **CONSTRUED** as a motion for relief of
16 judgment under Federal Rule of Civil Procedure 60(b) and is **DENIED**.

17 This file shall remain **CLOSED**.

18 **2.** The Clerk's Office is directed to **ENTER JUDGMENT pursuant to**
19 **Federal Rule of Civil Procedure 60(b) for the United States, in the**
20 **related civil file, No. 4:15-cv-05030-EFS.** The civil file shall remain
21 **CLOSED.**

3. The Court **DECLINES to issue a certificate of appealability.**

See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and to provide copies to Mr. Aguilar-Lopez and the United States Attorney's Office for the Eastern District of Washington.

DATED this 24th day of January 2019.

s/Edward F. Shea

EDWARD F. SHEA
Senior United States District Judge